

CQ Contract ID#: B90000115Department: Public WorksCQPW15000006  
E-130-15**Contract Details**

SERVICE Energy Performance Engineering Services

Preliminary Term: June 1, 2015 to May 31, 2020

NIFS ID #: CQPW15000006NIFS Entry Date: 6/24/15 Term: 5 years w/ 1 year extension provision

New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/>	1) Mandated Program:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Amendment <input type="checkbox"/>	2) Comptroller Approval Form Attached:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Time Extension <input type="checkbox"/>	3) CSEA Agmt. § 32 Compliance Attached:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Addl. Funds <input type="checkbox"/>	4) Vendor Ownership & Mgmt. Disclosure Attached:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Blanket Resolution <input type="checkbox"/>	5) Insurance Required	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
RES#		

**Agency Information**

Vendor	
Name: ECG Engineering, P.C.	Vendor ID# 800507717
Address: 222 Middle Country Road Smithtown, NY 11787	Contact Person Kendra McQuilton
	Phone (631)-360-0066

County Department
Department Contact Sean Sallie, Planner Supervisor, Nassau County Department of Public Works
Address 1195 Prospect Avenue, Westbury NY 11590
Phone 516-571-9342

**Routing Slip**

DATE Rec'd.	DEPARTMENT	Internal Verification	DATE App'd & Fw'd.	SIGNATURE	Leg. Approval Required
	Department	NIFS Entry (Dept) NIFS Appvl (Dept. Head)	<input type="checkbox"/> <input checked="" type="checkbox"/>	<i>[Signature]</i>	
	DPW (Capital Only)	CF Capital Fund Approval	<input type="checkbox"/>	<i>NA</i>	
	OMB	NIFS Approval	<input type="checkbox"/>	<i>[Signature]</i>	Yes <input type="checkbox"/> No <input type="checkbox"/> Not required if Blanket Res
<i>6/26/15</i>	County Attorney	CA RE & Insurance Verification	<input checked="" type="checkbox"/>	<i>[Signature]</i>	
<i>6/26/15</i>	County Attorney	CA Approval as to form	<input checked="" type="checkbox"/>	<i>[Signature]</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Legislative Affairs	Fw'd Original Contract to CA	<input type="checkbox"/>	<i>[Signature]</i>	
	Rules <input type="checkbox"/> / Leg. <input type="checkbox"/>		<input type="checkbox"/>		
	County Attorney	NIFS Approval	<input type="checkbox"/>		
	Comptroller	NIFS Approval	<input type="checkbox"/>		
<i>7/1/15</i>	County Executive	Notarization Filed with Clerk of the Leg.	<input type="checkbox"/>	<i>[Signature]</i>	



## Contract Summary

**Description:** Pursuant to Article 9 of the NYS Energy Law, a municipality may utilize projected energy savings to fund energy efficiency capital improvements to buildings and facilities in its ownership. The County seeks to initially enter into a contract with ECG Engineering, P.C., for energy performance engineering consultation services for a period of 5 years. The consultant would evaluate the opportunities for the County to reduce energy costs assist with the development of an RFP for an energy performance contractor (ESCO) and review of proposals.

**Purpose:** ESG, as the energy performance engineering consultant, would evaluate County buildings and facilities and identify measures to significantly reduce energy costs over time. After a thorough review of the County's energy demand and asset inventory, ECG would provide a summary of energy consumption by facility and asset along with a projection of energy reduction and cost savings based on industry data for other similar uses. Long term energy savings potential would be estimated and converted into a budget for funding the energy efficiency upgrades/projects. The County, with the assistance of ESG, would prepare and issue an RFP to solicit Energy Performance Contractors (ESCO) to develop a suite of energy efficiency projects that could be implemented within the estimated energy savings budget. Projects can range from lighting to renewable energy generation. ECG would then serve as the project engineer and would ultimately be responsible for the design of each project (the County would retain all approval jurisdiction). ECG would also be responsible for construction administration and post-construction supervision of the ESCO's monitoring and verification procedures ( in many cases, energy savings are guaranteed by an ESCO).

**Method of Procurement:** RFP

**Procurement History:** On February 14<sup>th</sup>, 2014, the Nassau County Department of Public Works issued an RFP for Energy Performance Engineering Services. Proposals were due on March 20, 2014. The RFP was posted on eProcurement and notice in Newsday. An addendum to the RFP was issued on March 14, 2014. Three firms submitted proposals: ECG Engineering, P.C., The Lee Michaels Group, LLC, and Nelson & Pope. Proposals were reviewed by a four person selection committee that resulted in the ECG technical proposal being scored the highest (see attached Selection Justification Memorandum).

**Description of General Provisions:** ESG Engineering, P.C. is tasked with evaluating County buildings and facilities for energy efficiency retrofitting. ECG will estimate cost savings generated by potential energy efficiency projects and use savings as a budget to guide the County in soliciting an energy performance contractor (ESCO). ECG is paid on a per energy efficiency project-basis, if, and only if, the County elects to move forward with hiring an ESCO.

**Impact on Funding / Price Analysis:** Payments for services rendered by ECG under this agreement are payable if and when the County enters into a future contract with and ESCO. The County will pay ECG, through a separate and future contract with an ESCO, in the amount of: 7% of total construction costs if construction cost is less than \$10m; 5% of total construction cost if total construction cost is more than \$10m. Payments evaluation/benchmarking, design and construction management services. Should a separate and future contract with an ESCO not be executed by the County, there will be no fee owed to ESG.

**Change in Contract from Prior Procurement:** N/A

**Recommendation:** (approve as submitted)

CQ Contract ID#: B90000115Department: Public Works

## Advisement Information

BUDGET CODES	
Fund:	GEN
Control:	PW06
Resp:	640
Object:	DE
Transaction:	500

RENEWAL	
% Increase	
% Decrease	

FUNDING SOURCE	AMOUNT
Revenue Contract <input type="checkbox"/>	
County	\$0.01
Federal	\$
State	\$
Capital	\$
Other	\$
<b>TOTAL</b>	<b>\$0.01</b>

LINE	INDEX/OBJECT CODE	AMOUNT
1	DE500 / PWGEN0640	\$0.01
2		\$
3		\$
4	<i>Y. Gmatz 4/26/15</i>	\$
5		\$
6		\$
<b>TOTAL</b>		<b>\$0.01</b>

Document Prepared By: Sean Sallie, AICP, Planning Supervisor, NCDPWDate: May 6, 2015

NIFS Certification		Comptroller Certification	County Executive Approval
I certify that this document was accepted into NIFS.		I certify that an unencumbered balance sufficient to cover this contract is present in the appropriation to be charged.	Name <i>[Signature]</i>
Name		Name	Date <i>7/1/15</i>
Date		Date	(For Office Use Only)
E #:			

RULES RESOLUTION NO. – 2015

A RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE  
TO EXECUTE A PERSONAL SERVICES AGREEMENT BETWEEN  
THE COUNTY OF NASSAU, ACTING ON BEHALF OF THE  
DEPARTMENT OF PUBLIC WORKS, AND ECG ENGINEERING, P.C.

WHEREAS, the County has negotiated a personal services agreement  
with ECG Engineering, P.C. in connection with energy performance  
engineering consultation services, a copy of which is on file with the Clerk  
of the Legislature; now, therefore, be it

RESOLVED, that the Rules Committee of the Nassau County  
Legislature authorizes the County Executive to execute the agreement with  
ECG Engineering, P.C.

George Maragos  
Comptroller



OFFICE OF THE COMPTROLLER  
240 Old Country Road  
Mineola, New York 11501

## COMPTROLLER APPROVAL FORM FOR PERSONAL, PROFESSIONAL OR HUMAN SERVICES CONTRACTS

*Attach this form along with all personal, professional or human services contracts, contract renewals, extensions and amendments.*

CONTRACTOR NAME: ECG Engineering, P.C.

CONTRACTOR ADDRESS: 222 Middle Country Road, Suite 318, Smithtown, NY 11787

FEDERAL TAX ID #: 800507717

**Instructions:** Please check the appropriate box ("☑") after one of the following roman numerals, and provide all the requested information.

**I. ☐ The contract was awarded to the lowest, responsible bidder after advertisement for sealed bids.** The contract was awarded after a request for sealed bids was published in \_\_\_\_\_ [newspaper] on \_\_\_\_\_ [date]. The sealed bids were publicly opened on \_\_\_\_\_ [date]. \_\_\_\_\_ [#] of sealed bids were received and opened.

**II. ☒ The contractor was selected pursuant to a Request for Proposals.**

The Contract was entered into after a written request for proposals for Energy Performance Engineering Services (PW-B9000011-S) was issued on February 14<sup>th</sup>, 2014. Proposals were due on March 20, 2014. The RFP was posted on eProcurement and notice in Newsday. An addendum to the RFP was issued on March 14, 2014. Three firms submitted proposals: ECG Engineering, P.C., The Lee Michaels Group, LLC, and Nelson & Pope. Proposals were reviewed by a four person selection committee that resulted in the ECG technical proposal being scored the highest. The evaluation committee consisted of: Sean Sallie, Planning Division Supervisor, NCDPW, Conal Denion, Deputy County Attorney, Donald Hohn, Planner III, NCPDW and Mark Berchoff, Electrical Engineer IV, NCDPW.

**III. ☐ This is a renewal, extension or amendment of an existing contract.**

The contract was originally executed by Nassau County on \_\_\_\_\_ [date]. This is a renewal or extension pursuant to the contract, or an amendment within the scope of the contract or RFP (copies of the relevant pages are attached). The original contract was entered into after \_\_\_\_\_

\_\_\_\_\_  
[describe procurement method, i.e., RFP, three proposals evaluated, etc.] Attach a copy of the most recent evaluation of the contractor's performance for any contract to be renewed or extended. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to continue to contract with the county.

**IV. ☐ Pursuant to Executive Order No. 1 of 1993, as amended, at least three proposals were solicited and received. The attached memorandum from the department head describes the proposals received, along with the cost of each proposal.**

- ☐ A. The contract has been awarded to the proposer offering the lowest cost proposal; **OR:**
- ☐ B. The attached memorandum contains a detailed explanation as to the reason(s) why the contract was awarded to other than the lowest-cost proposer. The attachment includes a specific delineation of the unique skills and experience, the specific reasons why a proposal is deemed superior, and/or why the proposer has been judged to be able to perform more quickly than other proposers.

**V. ☐ Pursuant to Executive Order No. 1 of 1993 as amended, the attached memorandum from the department head explains why the department did not obtain at least three proposals.**

- ☐ A. There are only one or two providers of the services sought or less than three providers submitted proposals. The memorandum describes how the contractor was determined to be the sole source provider of the personal service needed or explains why only two proposals could be obtained. If two proposals were obtained, the memorandum explains that the contract was awarded to the lowest cost proposer, or why the selected proposer offered the higher quality proposal, the proposer's unique and special experience, skill, or expertise, or its availability to perform in the most immediate and timely manner.
- ☐ B. The memorandum explains that the contractor's selection was dictated by the terms of a federal or New York State grant, by legislation or by a court order. (Copies of the relevant documents are attached).
- ☐ C. Pursuant to General Municipal Law Section 104, the department is purchasing the services required through a New York State Office of General Services contract no. \_\_\_\_\_, and the attached memorandum explains how the purchase is within the scope of the terms of that contract.

- ☐ D. Pursuant to General Municipal Law Section 119-o, the department is purchasing the services required through an inter-municipal agreement.

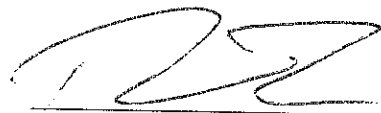
**VI. ☐ This is a human services contract with a not-for-profit agency for which a competitive process has not been initiated.** Attached is a memorandum that explains the reasons for entering into this contract without conducting a competitive process, and details when the department intends to initiate a competitive process for the future award of these services. For any such contract, where the vendor has previously provided services to the county, attach a copy of the most recent evaluation of the vendor's performance. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to contract with the county.

In certain limited circumstances, conducting a competitive process and/or completing performance evaluations may not be possible because of the nature of the human services program, or because of a compelling need to continue services through the same provider. In those circumstances, attach an explanation of why a competitive process and/or performance evaluation is inapplicable.

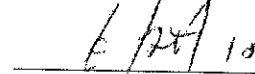
**VII. ☐ This is a public works contract for the provision of architectural, engineering or surveying services.** The attached memorandum provides details of the department's compliance with Board of Supervisors' Resolution No.928 of 1993, including its receipt and evaluation of annual Statements of Qualifications & Performance Data, and its negotiations with the most highly qualified firms.

***In addition, if this is a contract with an individual or with an entity that has only one or two employees:***

☐ a review of the criteria set forth by the Internal Revenue Service, *Revenue Ruling No. 87-41, 1987-1 C.B. 296*, attached as Appendix A to the Comptroller's Memorandum, dated February 13, 2004, concerning independent contractors and employees indicates that the contractor would not be considered an employee for federal tax purposes.



Department Head Signature



Date

***NOTE:*** Any information requested above, or in the exhibit below, may be included in the county's "staff summary" form in lieu of a separate memorandum.

*Compt. form Pers./Prof. Services Contracts: Rev. 02/04*

## REQUEST TO INITIATE

14-0270

## REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSAL/REQUEST FOR BID CONTRACT

PART I: Approval by the Deputy County Executive for Operations must be obtained prior to ANY RFQ/RFP/RFBC☐ RFQ☒ RFP☐ RFBC☐ In-House Work OrderProject Title: Energy Performance Engineering Services

Department: Public Works

Project Manager: Donald HohnDate: February 14, 2014

**Service Requested:** The purpose of the RFP is to solicit proposals from competent energy performance engineering firms to assist and advise the County in their effort to improve County facilities by employing the process of "Energy Performance Contracting (EPC)", pursuant to Article 9 of the New York State Energy Law.

**Justification:** The County currently owns and maintains hundreds of structures and properties ranging from low and mid-rise office buildings, parks and infrastructure-related facilities of varying size. Given its portfolio of assets, the County is poised to take advantage of recent advances in technology and the availability of financial programs to increase energy efficiency and reduce operating expenses.

Requested by: Department of Public Works  
Department/Agency/OfficeProject Cost for this Phase/Contract: \$0 (Plan/Design/Construction/CM/Equipment)  
Circle appropriate phaseTotal Project Cost: Payment through energy savings generated Date Start Work: Nov. 3, 2014 Duration: 6 years  
Includes, design, construction and cm Phase being requested Phase being requestedCapital Funding Approval: ☐ YES ☒ NO

SIGNATURE

DATE

Funding Allocation (Capital Project): no fundsSee Attached Sheet if multiyear ☐NIFS Entered: \_\_\_\_\_  
SIGNATURE DATEAIM Entered: Carmen Fajen 10/8  
SIGNATURE DATEFunding Code: \_\_\_\_\_  
use this on all encumbrancesTimesheet Code: \_\_\_\_\_  
use this on timesheets

## State Environmental Quality Review Act (SEQRA):

Type II Action ☒ or,Environmental Assessment Form Required ☐ Supplemental Environmental Documentation \_\_\_\_\_Department Head Approval: ☒ YES ☐ NO

SIGNATURE

DCE/Ops Approval: ☒ YES ☐ NO

SIGNATURE

**PART II: To be submitted to Chief Deputy County Executive after Qualifications/Proposals/Contracts are received from Responding vendors.**

See Attached Sheet ☐

<b>Vendor</b>	<b>Quote</b>	<b>Comment</b>
1. <u>ECG Engineering, P.C.</u>	<u>7% of total Construction costs if construction cost is less than \$10m, 5% of total if total construction cost is more than \$10m</u>	<u>See Attached</u>
2. <u>The Lee Michaels Group, LLC</u>	<u>7% of total construction cost</u>	<u>See Attached</u>
3. <u>Nelson &amp; Pope</u>	<u>6% of total construction cost</u>	<u>See Attached</u>
4. _____	_____	_____

DCE/Ops Approval:

YES

NO

Signature \_\_\_\_\_

**COUNTY OF NASSAU**  
**DEPARTMENT OF PUBLIC WORKS**  
**Inter-Departmental Memo**

**TO:** Office of the County Executive  
Att: Richard R. Walker, Chief Deputy County Executive

**FROM:** Department of Public Works

**DATE:** October 9, 2014

**SUBJECT:** Request for Proposals for Energy Performance Engineering Services

On February 14, 2014, the Nassau County Department of Public Works issued a Request for Proposals (the "RFP"), the purpose of which was solicit proposals from competent energy performance engineering firms to assist and advise the County in their effort to improve County facilities by employing the process of "Energy Performance Contracting (EPC)", pursuant to Article 9 of the New York State Energy Law

A proposal evaluation committee (the "Committee") was formed and composed of:

Sean Sallie, Planner Supervisor, Public Works  
Donald Hohn, Planner III, Public Works  
Mark Berchoff, Electrical Engineer IV, Public Works  
Conal Denion, Deputy County Attorney

The Committee was provided electronic copies of the technical proposals and score sheets on May 30, 2014. A meeting was held on July 24, 2014 to discuss the proposals and to rank proposals from highest to lowest based on their cumulative score. The scoring results (shown in Table 1) revealed that ECG Engineering, P.C. scored the highest, The Lee Michaels Group, LLC scored the second highest, and Nelson & Pope scored the third highest. The reasons for the highest scoring proposal were as follows:

1. ECG Engineering demonstrated superior experience in energy performance contract development and management for large Municipalities, school districts whose needs are similar to the needs of Nassau County. Other respondents only had limited experience performing such services.
2. ECG Engineering provided numerous references from past and current clients, all of which expressed overwhelming satisfaction with the work performed by the contractor. Many of the references where from clients whose needs are similar to the needs of Nassau County.
3. ECG Engineering employs a greater amount of employees than other responders all of whom demonstrate superior qualifications and experience in performing energy performance contract development and management.
4. ECG Engineering demonstrated superior knowledge and experience working with green, sustainable and renewable energy systems and energy conservation measures (ECM) where other respondents did not provide any experience.



Table 1

Selection Committee		Proposals		
RATING CRITERIA	Max VALUE (combined score)	Nelson & Pope	LMG	ECG
Extent and depth of experience performing energy performance contract development and management for the County	100	56	86	95
Level of client satisfaction determined from supplied references	80	28	50	78
Experience, qualifications, and availability of the professional staff expected to be assigned to this project	100	48	84	92
Experience with green, sustainable and renewable energy systems and energy conservation measures (ECM)	60	27	48	60
<b>Total Score</b>	340 Points	<b>159</b>	<b>268</b>	<b>325</b>
<b>SCORING RANK</b>	N/A	<b>3</b>	<b>2</b>	<b>1</b>

Subsequent to scoring and ranking the technical proposals, the Committee opened and reviewed the cost proposals. The cost proposals (table 2), in the order of highest to lowest, were as follows The Lee Michaels Group, LLC, ECG Engineering, P.C. and Nelson & Pope.

Table 2

Firm	ECG Engineering, P.C.	The Lee Michaels Group, LLC	Nelson & Pope
Cost Proposal	7% of total Construction costs if construction cost is less than \$10m 5% of total if total construction cost is more than \$10m	7% of total construction cost	6% of total construction cost

Richard R. Walker, Chief Deputy County Executive

October 9, 2014

Page 3

SUBJECT: Request for Proposals for Energy Performance Engineering Services

In addition to the total fee, two of the respondents included a schedule for partial payments as seen in table 3.

Table 3

Firm	ECG Engineering, P.C.	The Lee Michaels Group, LLC	Nelson & Pope
Cost Proposal Partial Payments	25% upon signing contract with ESCO 35% upon submittal of plans and Specs 30% upon approval of Plans and specs. 10% upon substantial completion	25% upon signing contract with ESCO 35% upon submittal of plans and Specs 25% upon approval of Plans and specs. 15% upon substantial completion	No partial payment schedule submitted

Given the tiered structure of ECG Engineering's fee, it is the best value for the County.

For the reasons stated above, the Committee recommends that ECG Engineering, P.C. be awarded an energy performance engineering contract to assist and advise the County in their effort to improve the energy performance of County facilities.



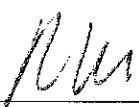
Shila Shah-Gavnoudias  
Commissioner

SSG:SS:dar

c: Conal Denion, Deputy County Attorney  
Satish Sood, Deputy Commissioner  
Mark Berchoff, Electrical Engineer IV, Public Works  
Sean Sallie, Planner Supervisor, Public Works  
Donald Hohn, Planner III, Public Works

APPROVED:

DISAPPROVED:

 10/31/14  
Richard R. Walker  
Chief Deputy County Executive

Date

Richard R. Walker  
Chief Deputy County Executive

Date

**NASSAU COUNTY DEPARTMENT OF PUBLIC WORKS  
PROPOSED CONTRACT**

**To:** Civil Service Employees Association, Nassau Local 830  
Att: Ronald Gurrieri, Executive Vice President (fax 742-3801)

**From:** Department of Public Works (fax 571-9657)

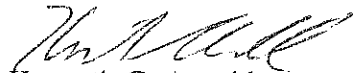
**Date:** March 23, 2015

**Subject:** CSEA Notification of a proposed DPW Contract  
Project Name: Energy Performance Engineering Services

The following notification is to comply with the spirit and intent of Section 32 of the County/CSEA contract. It should not be implied that the proposed DPW contract/agreement is for the work which has "historically and exclusively been performed by bargaining unit members".

1. DPW plans to recommend a contract/agreement for the following services:  
Energy Performance Engineering Services
2. The work involves the following:  
To assist and advise the County in its effort to improve County facilities by employing the process of "Energy Performance Contracting (EPC)", pursuant to Article 9 of the New York State Energy Law
3. Estimated cost: N/A
4. Estimated duration: 3-5 years

Should you wish to propose an alternative to the proposed contract/agreement, please respond within 10 days, to: DPW, Division of Administration. Attn: Kenneth G. Arnold, Assistant to the Commissioner, telephone 571-9607, fax 571-9657.



Kenneth G. Arnold  
Assistant to the Commissioner

KGA:

- c: Shila Shah-Gavnoudias, Commissioner  
Christopher Fusco, Director, Office of Labor Relations  
Keith Cromwell, Office of Labor Relations  
Patricia Kivo, Unit Head, Human Resources Unit  
Sean Sallie, Planning Supervisor  
Loretta Dionisio, Hydrogeologist II

We are transmitting one (1) page including this sheet. If there were problems with this transmission, call 571-9604.



ENGINEERING, P.C.

RED HOOK, NY • DANBURY, CT • MECHANICSBURG, PA • FORT LAUDERDALE, FL • PRINCETON, NJ

222 MIDDLE COUNTRY ROAD  
SUITE 318  
SMITHTOWN, NY 11787  
MAIN TEL 631-360-0006  
FAX 631-360-0277  
[www.ecgengineering.com](http://www.ecgengineering.com)

March 23, 2015

Mr. Sean E. Sallie, AICP  
Nassau County Department of Public Works  
Planning Division  
1194 Prospect Avenue  
Westbury, NY 11590

**RE: NCDPW – Energy Performance Engineering**

Dear Mr. Sallie:

As requested, enclosed please find the following:

- Certificate of Liability Insurance
- Request for Taxpayer Identification Number and Certification Form
- Administrative Service Charge

If there is anything else that is needed, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kendra McQuilton".

Kendra McQuilton  
Director of Business Development



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/20/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Fabricant & Fabricant, Inc. 1251 Old Northern Boulevard P.O. Box 9004 Roslyn NY 11576		<b>CONTACT NAME:</b> Peggy Schoendorf <b>PHONE (A/C No. Ext.):</b> (516) 621-9000 <b>E-MAIL ADDRESS:</b> peggys@fabricantinsurance.com <b>FAX (A/C No.):</b> (516) 621-0092	
<b>INSURED</b> ECG Engineering, PC 222 Middle Country Road Suite 318 Smithtown NY 11787		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Hartford Ins. Co. of the Midwest 37478 INSURER B: Homeland Insurance Co. of NY 37478 INSURER C: INSURER D: INSURER E: INSURER F:	

**COVERAGES**

CERTIFICATE NUMBER: Updated 14-15

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			12SBART9959	11/1/2014	11/1/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
A	AUTOMOBILE LIABILITY			12SBART9959	11/1/2014	11/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB		<input checked="" type="checkbox"/> OCCUR	12SBART9959	11/1/2014	11/1/2015	EACH OCCURRENCE \$ 2,000,000
	EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 2,000,000
	DED <input checked="" type="checkbox"/>	RETENTION \$ 10,000					
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			12WECJW6575	02/04/2015	02/04/2016	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability			7930009210001	10/11/2014	10/11/2015	Each Occurrence \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Nassau County Department of Public Works is included as Additional Insured with respect to work performed by Named Insured as required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

Nassau County Department of Public Works  
1194 Prospect Avenue  
Westbury, NY 11590

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Kenneth Fabricant/COR



ENGINEERING, P.C.

RED HOOK, NY • DANBURY, CT • MECHANICSBURG, PA • FORT LAUDERDALE, FL • PRINCETON, NJ

222 MIDDLE COUNTRY ROAD  
SUITE 318  
SMITHTOWN, NY 11787  
MAIN TEL 631-360-0006  
FAX 631-360-0277  
www.ecgengineering.com

**Nassau County**  
**Estimated Energy Performance Contract Timeline**  
**As of March 26, 2015**

Please note that the the County is not obligated in any way to move forward with the project until a contract is executed with the Energy Services Company (step #5 below). However, it is asked that any and all concerns about the project be voiced prior to the development of the Comprehensive Energy Audit (item #4 below), as tremendous time, money, and effort will be expended by both the ESCO and ECG during that phase to develop the final scope of work and savings calculations.

At no point in the process will the County be responsible for out-of-pocket expenses. All professional fees and other project costs will be paid for entirely out of the guaranteed energy savings the project will generate.

1. Preliminary Energy Audit (PEA):

ECG will perform an evaluation of the County's energy cost and consumption data over the past 12 months to determine if sufficient energy savings can be realized to justify pursuing an Energy Performance Contract.

Start: Mid-April, 2015  
Completion: May 15, 2015

2. Request For Proposals (RFP):

Energy Services Companies (ESCOs) are given ample time to develop their proposals and present a comprehensive plan/strategy for energy savings County-wide.

RFP Issued: June 1, 2015  
Approximate Time Required: 7-8 weeks  
Deadline for Submission of Proposals: July 23, 2015 at 3:00 P.M.

3. RFP Evaluation:

ECG engineers, consultants, and financial advisors evaluate the proposals received. The technical approach, energy savings, and financial projections/assumptions are evaluated for each ESCO and ECG provides a recommendation to the County.

Conduct Interviews with Top Proposers: Est. September 14, 2015  
ECG Recommendation Provided to County: Est. September 18, 2015  
County Formally Appoints ESCO: September/October Meeting

4. Investment-Grade Comprehensive Energy Audit (CEA):

This process will require the successful ESCO to conduct additional inspections and financial evaluations to produce an investment grade comprehensive energy audit, which will be used to support the financing of the project. The ESCO will be required to guarantee the savings identified in the CEA. When finished ECG will evaluate the CEA to ensure that projected energy savings are real and that all energy savings opportunities are considered.

Approximate Time Required:	12 weeks
Comprehensive Energy Audit Complete:	February 2016

5. Contract Negotiations:

ECG will assist the County in the review of a contract that reflects the scope of work identified in the CEA and ensures that the County is free from cost or liability throughout the term of the project. This process will require County approval and involvement of legal counsel.

Approximate Time Required:	4-6 weeks
County Signs Contract with ESCO:	March 2016

6. Project Design and County review:

ECG will design the project to reflect the scope of work identified in the CEA. All plans, specifications, and applications will be prepared and submitted in accordance with applicable requirements.

Approximate Time Required for Design:	12 weeks
Submission of Project to applicable agencies:	June 2016
Approval of Project:	Est. July 2016

7. Financing

ESCO and ECG will assist County in arranging for financing through an RFP about a month prior to approval of plans and specs.

Secure Financing:	July 2016
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8. Construction Phase:

Construction will depend on scope of work and timing of design approval. Items such as lighting that can be upgraded with minimal disruption will commence immediately. Items such as heating plant upgrades, hazardous materials (asbestos), windows, etc. can only be done during the hours when facilities are not in full use.

Approximate Time for Construction:	1 year
Begin Construction:	Est. August 2016
Substantial Completion:	Est. September 2017

9. Monitoring and Verification (M&V) Phase:

ESCO will coordinate a detailed and comprehensive Measurement and Verification plan to ensure actual ongoing savings, which includes on-going monitoring for the term of the contract. This is a critical element of the performance contract because it provides the basis for the energy savings guarantee and debt-service payment.

ECG will, for a period of 36 months after substantial completion, assist County to evaluate actual energy savings realized by the Energy Performance Project. This will include, where needed, discussions and meetings with the ESCO and the review of monitoring and verification procedures and related calculations.

M&V Phase Commences: Est. September 2017

First M&V Report Delivered to County: December 2018 (3 months from end of first savings year is allowed for report preparation)

M & V Phase Concludes: At The County's discretion.

EDWARD P. MANGANO  
COUNTY EXECUTIVE



SHILA SHAH-GAVNOUDIAS, P.E.  
COMMISSIONER

COUNTY OF NASSAU  
DEPARTMENT OF PUBLIC WORKS  
1194 PROSPECT AVENUE  
WESTBURY, NEW YORK 11590 - 2723

## Energy Performance Engineering Services

### AGREEMENT NO. B9000011S

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement"), dated as of the date this Agreement is executed by the County of Nassau, between (i) Nassau County, a municipal corporation having its principal office at 1550 Franklin Avenue, Mineola, New York 11501 (the "County") acting on behalf of the County Department of Public Works, having its principal office at 1194 Prospect Avenue, Westbury, New York 11590 (the "Department") and (ii) ECG Engineering, P.C., having an office at 222 Middle Country Road, Suite 318, Smithtown, New York 11787 (the "Firm").

#### WITNESSETH:

WHEREAS, the County desires to hire the Firm to perform the services described in this Agreement;  
and

WHEREAS, this is a personal service contract within the intent and purview of Section 2206 of the County Charter;

WHEREAS, the Firm desires to perform the services described in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. This term of this Agreement shall commence on the date on which this Agreement is executed by the County (the "Commencement Date") and terminate on the fifth (5) year anniversary of the Commencement Date. (the "Expiration Date") unless sooner terminated or extended in accordance with its terms. Notwithstanding the foregoing, the Department, in its sole discretion, shall have the right to extend this Agreement for a period of up to one (1) year by delivering a notice of extension to the Firm at least thirty (30) days prior to the Expiration Date. The Agreement so extended shall be on the same terms, conditions and covenants as during the initial term except that the Expiration Date shall be modified in accordance with the notice of extension. Any task order issued to the Firm, prior to the expiration of date of the Agreement, may be completed in its entirety, even if the work is performed beyond the expiration date of the Agreement. For each specific task work order where work is performed past the Agreement expiration date, the Firm will be authorized in writing by the Department to perform and be compensated for their services.

2. Services, Extra Services and Reimbursable Expenses

(a) The services to be provided by the Firm under this Agreement consist of Energy Performance Engineering Services. The specific work divisions and deliverables related to this project are more particularly described in the "Detailed Scope of Services," attached hereto and hereby made a part

hereof as Exhibit "A".

(b) At any time during the term of this Agreement, the County may, in its sole and absolute discretion, require the Firm to perform Extra Services. The Firm shall not perform, nor be compensated for, Extra Services without the prior written approval of the Commissioner of the Department or his or her duly designated deputy. The Firm agrees to perform any such Extra Services in accordance with the terms and conditions contained in this Agreement. As used herein, "Extra Services" means additional services which are (i) not specifically set forth in Exhibit "A", (ii) necessary or in furtherance of the goals of this Agreement and (iii) not due to the fault or negligence of the Firm.

(c) The following items are not included in the Firm's fee, and shall be reimbursable at an actual cost as expenditures in the interest of the project, provided (i) they have been approved in advance by the Commissioner of the Department in writing, in his/her sole discretion, (ii) are not considered services as set forth in this Agreement, and (iii) subject to compliance with the County's bill paying procedures:

- (1) The direct cost of expenses for travel to locations other than the County and or the project site, including transportation (coach unless otherwise authorized by the County), reasonable meal and lodging expenses, at rates established by the County for its own employees, and as have been approved in advance by the County.
- (2) Testing Laboratory Services.
- (3) Messenger service and cables as not necessarily incurred in the performance of services hereunder by the Firm and their sub-consultants.
- (4) Final models, photographs, renderings, Building Information Modeling (BIM) and Laser Scanning as requested by the County.
- (5) Reproduction of design development and construction document drawings, specification, reports and other documents furnished to, or on behalf of, the County in excess of five (5) copies each. Any items prepared on behalf of the Firm or their sub-consultants shall not be paid for by the County.
- (6) Premium pay for overtime work or night differential, if required by the specific task, shall be subject to the payment terms indicated in Exhibit "B".
- (7) Other comparable expenses, as outlined in Section 8 of Exhibit "A".

### 3. Payment.

(a) Amount of Consideration. The amount to be paid to the Firm as full consideration for the Firm's services under this Agreement, including any extra services and reimbursements that may be so authorized, shall be payable as itemized in the "Payment Schedule," attached hereto and made a hereby part hereof as Exhibit "B".

(b) Vouchers; Voucher Review, Approval and Audit. Payments shall be made to the Firm in arrears and shall be contingent upon (i) the Firm submitting a claim voucher (the "Voucher") in a form satisfactory to the County, that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the County Comptroller or his or her duly designated representative (the "Comptroller").

(c) Timing of Claims for Payment. The Firm shall submit claims no later than three (3) months following the County's receipt of the services that are the subject of the claim and no more frequently than once a month.

(d) No Duplication of Payments. Payments under this Agreement shall not duplicate payments for any work performed or to be performed under other agreements between the Firm and any funding source including the County.

(e) Payments in Connection with Termination or Notice of Termination. Unless a provision of this Agreement expressly states otherwise, payments to the Firm following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after the Firm received notice that the County did not desire to receive such services.

(f) Payments Relating to Services Rendered by Subconsultants. The County retains the right, but not the obligation, prior to making any payment to the Firm, to demand that the Firm furnish to the County, proof acceptable to the County, in its sole and absolute discretion, that all due and payable claims made by Subconsultants in connection with this Agreement have been paid to date or are included in the amount being requested by the Firm.

#### 4. Ownership and Control of Work Product

##### (a) Copyrights.

- (i) Upon execution of this Agreement, any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items, shall become the exclusive property of the County.
- (ii) Any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and the County shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Firm hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the County, free and clear of any liens, claims, or other encumbrances. The Firm shall retain no copyright or intellectual property interest in the Copyrightable Materials, and they shall be used by the Firm for no other purpose without the prior written permission of the County.
- (iii) The Firm acknowledges that the County may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Firm shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.
- (iv) The Firm represents and warrants that the Copyrightable Materials: (1) are wholly original material not published elsewhere (except for material that is in the public domain); (2) do not violate any copyright law; (3) do not constitute defamation or invasion of the right of privacy or publicity, and (4) are not an infringement of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Firm has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the County upon execution of this Agreement.

(b) **Patents and Inventions.** Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(c) **Pre-existing Rights.** In no case shall 4(a) or 4(b) above apply to, or prevent the Firm from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

(d) **Infringements of Patents, Trademarks, and Copyrights.** The Firm shall indemnify and hold the County harmless against any claim for any infringement by the Firm of any copyright, trade secrets, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Firm in the performance of this Agreement. The Firm shall indemnify and hold the County harmless regardless of whether or not the infringement arises out of compliance with the scope of services/scope of work.

(e) **Antitrust.** The Firm hereby assigns, sells, and transfers to the County all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State of New York or of the United States relating to the particular goods or services procured by the County under this Agreement.

5. **Independent Contractor.** The Firm is an independent Contractor of the County. The Firm shall not, nor shall any officer, director, employee, servant, agent or independent Contractor of the Firm (a "Firm Agent"), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person with the authority to commit the County to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

6. **No Arrears or Default.** The Firm is not in arrears to the County upon any debt or contract and it is not in default as surety, Firm, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

7. **Compliance with Law.**

(a) **Generally.** The Firm shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, human rights, a living wage, and disclosure of information, in connection with its performance under this Agreement. In furtherance of the foregoing, the Firm is bound by and shall comply with the terms of Appendices "EE" attached hereto and hereby made a part hereof. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) **Nassau County Living Wage Law.** Pursuant to LL 1-2006, as amended, and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, the Firm agrees as follows:

- (i) Firm shall comply with the applicable requirements of the Living Wage Law, as amended;
- (ii) Failure to comply with the Living Wage Law, as amended, constitutes a material breach of this Agreement, such breach being determined solely by the County. Firm has the right to cure such breach within thirty days of receipt of notice of breach from

the County. In the event that such breach is not timely cured, the County may terminate this Agreement as well as exercise any other rights available to the County under applicable law.

- (iii) It shall be a continuing obligation of the Firm to inform the County of any material changes in the content of its certification of compliance and shall provide to the County any information necessary to maintain the certification's accuracy.

(c) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Firm acknowledges that Firm Information in the County's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the County shall make reasonable efforts to notify the Firm of such request prior to disclosure of the Information so that the Firm may take such action as it deems appropriate.

(d) Protection of Client Information. The Firm acknowledges and agrees that all information that the Firm acquires in connection with performance under this Agreement shall be strictly confidential, used solely for the purpose of performing services to or on behalf of the County, and shall not be disclosed to third parties except (i) as permitted under this Agreement, (ii) with the written consent of the County (and then only to the extent of the consent), or (iii) upon legal compulsion.

8. Minimum Service Standards. Regardless of whether required by Law:

(a) The Firm shall, and shall cause Firm Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) The Firm shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Firm operates. The Firm shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Firm Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

9. Indemnification; Defense; Cooperation.

(a) The Firm shall be solely responsible for and shall indemnify and hold harmless the County, the Department and its officers, employees, and agents (the "Indemnified Parties") from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of the Firm or a Firm Agent, regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Firm shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of an indemnified party.

(b) The Firm shall, upon the County's demand and at the County's direction, promptly and diligently defend, at the Firm's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which the Firm is responsible under this Section, and, further to the Firm's indemnification obligations, the Firm shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The Firm shall, and shall cause Firm Agents to, cooperate with the County and the Department in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement, including the acts or omissions of the Firm and/or a Firm Agent in connection with this Agreement.

(d) Limitation of Liability. In no event shall either party be liable to the other for any indirect,

special, consequential, incidental, or punitive damages arising out of this Agreement or any Task Order issued hereunder.

(e) The provisions of this Section shall survive the termination of this Agreement.

10. Insurance.

(a) Types and Amounts. The Firm shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name "Nassau County" as an additional insured and have a minimum single combined limit of liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate coverage, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) aggregate coverage, (iii) compensation insurance for the benefit of the Firm's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law, and (iv) such additional insurance as the County may from time to time specify.

(b) Acceptability; Deductibles; Subconsultants. All insurance obtained and maintained by the Firm pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed to do business in New York State and acceptable to the County, and which is (ii) in form and substance acceptable to the County. The Firm shall be solely responsible for the payment of all deductibles to which such policies are subject. The Firm shall require any Subconsultant hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Firm under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the Department. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Firm shall provide written notice to the Department of the same and deliver to the Department renewal or replacement certificates of insurance. The Firm shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Firm to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Firm to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the County reserves the right to consider this Agreement terminated as of the date of such failure.

11. Assignment; Amendment; Waiver; Subcontracting. This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the County Executive or his or her duly designated deputy (the "County Executive"), and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

12. Termination.

(a) Generally. This Agreement may be terminated (i) for any reason by the County upon thirty (30) days' written notice to the Firm, (ii) for "Cause" by the County immediately upon the receipt by the Firm of written notice of termination, (iii) upon mutual written Agreement of the County and the Firm, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to

obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

(b) By the Firm. This Agreement may be terminated by the Firm if performance becomes impracticable through no fault of the Firm, where the impracticability relates to the Firm's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by the Firm delivering to the commissioner or other head of the Department (the "Commissioner"), at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible), a notice stating (i) that the Firm is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Firm's right to terminate under this subsection. A copy of the notice given to the Commissioner shall be given to the Deputy County Executive who oversees the administration of the Department (the "Applicable DCE") on the same day that notice is given to the Commissioner.

(c) Firm Assistance upon Termination. In connection with the termination or impending termination of this Agreement the Firm shall, regardless of the reason for termination, take all actions reasonably requested by the County (including those set forth in other provisions of this Agreement) to assist the County in transitioning the Firm's responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

13. Accounting Procedures; Records. The Firm shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Firm is a non-profit entity, must comply with the accounting guidelines set forth in the federal Office of Management & Budget Circular A-122, "Cost Principles for Non-Profit Organizations." Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

14. Limitations on Actions and Special Proceedings against the County. No action or special proceeding shall lie or be prosecuted or maintained against the County upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Firm shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Applicable DCE for adjustment and the County shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Firm shall send or deliver copies of the documents presented to the Applicable DCE under this Section to each of (i) the Department and the (ii) the County Attorney (at the address specified above for the County) on the same day that documents are sent or delivered to the Applicable DCE. The complaint or necessary moving papers of the Firm shall allege that the above-described actions and inactions preceded the Firm's action or special proceeding against the County.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

15. Work Performance Liability. The Firm is and shall remain primarily liable for the successful completion of all work in accordance this Agreement irrespective of whether the Firm is using a Firm Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Firm Agent has been approved by the County.

16. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

17. Notices. Any notice, request, demand or other communication required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) deemed given or made on the date the delivery receipt was signed by a County employee, three (3) business days after it is mailed or one (1) business day after it is released to a courier service, as applicable, and (d)(i) if to the Department, to the attention of the Commissioner at the address specified above for the Department, (ii) if to an Applicable DCE, to the attention of the Applicable DCE (whose name the Firm shall obtain from the Department) at the address specified above for the County, (iii) if to the Comptroller, to the attention of the Comptroller at 240 Old Country Road, Mineola, NY 11501, and (iv) if to the Firm, to the attention of the person who executed this Agreement on behalf of the Firm at the address specified above for the Firm, or in each case to such other persons or addresses as shall be designated by written notice.

18. All Legal Provisions Deemed Included; Severability; Supremacy and Construction.

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

(d) Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

19. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

20. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

21. Administrative Service Charge. The Firm agrees to pay the County an administrative service charge of **Five Hundred and thirty three (\$533)** dollars for the processing of this Agreement pursuant to Ordinance Number 74-1979, as amended by Ordinance Number 201-2001. The

administrative service charge shall be due and payable to the County by the Firm upon signing this Agreement.

22. Joint Venture.

(a) If the Firm is comprised of more than one legal entity or any group of partners or joint venturers associated for the purpose of undertaking this Agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the Firm and each of the others hereunder; and as such, each acts both as principal and agent of the Firm and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this Agreement shall be jointly and severally liable to third parties, including but not limited to the County, for the acts or omissions of the Firm or any other entity, partner or joint venturer hereunder.

(b) If the Firm is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

22. Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County approvals have been obtained, including, if required, approval by the County Legislature, and (ii) this Agreement has been executed by the County Executive (as defined in this Agreement).

(b) Availability of Funds. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to the County from the state and/or federal governments.

{Remainder of page intentionally lefty blank}

IN WITNESS WHEREOF, the Firm and the County have executed this Agreement as of the date first above written.

By: David Newman, PE  
Name: DAVID NEWMAN, PE  
Title: VP, Engineering  
Date: 5/5/15

NASSAU COUNTY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: County Executive  
☐ Deputy County Executive  
Date: \_\_\_\_\_

PLEASE EXECUTE IN BLUE INK

**[Note to Departments:** County offices and bureaus that need to approve this Agreement in accordance with the Charter should evidence approval by signing the contract routing form and not by placing a signature on this Agreement.]

STATE OF NEW YORK)

)ss.:

COUNTY OF NASSAU )

On the 5<sup>th</sup> day of May in the year 2015 before me personally came David M. Newman to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Nassau; that he or she is the Vice President/Engineer of ECG Engineering PC the corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto by authority of the board of directors of said corporation.

NOTARY PUBLIC

*Joyce D. Puleo*

JOYCE D. PULEO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PU4987291  
Qualified in Suffolk County  
My Commission Expires November 16, 2017

STATE OF NEW YORK)

)ss.:

COUNTY OF NASSAU )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of \_\_\_\_\_; that he or she is a Deputy County Executive of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the County Government Law of Nassau County.

NOTARY PUBLIC

# **EXHIBIT "A"**

## **DETAILED SCOPE OF SERVICES**

### **Energy Performance Engineering Services**

#### **SECTION 1: SCOPE OF FIRM'S SERVICES**

- A. The Firm shall provide all architectural and engineering services, including but not limited to structural, mechanical and electrical engineering services, required to complete the following services on behalf of the County. To the extent that the following consultants are, in the Firm's professional judgment, required for proper performance of the Engineer's basic services hereunder, such consultants shall be retained by the Firm at no additional cost to County: on-site civil engineering, computer networking, electrical engineering, fire protection/life safety, lighting, mechanical engineering, equipment, roofing, specifications and structural engineering.
- B. The Project is an Energy Performance Project (as defined below) for the facilities owned and operated by the County.
- C. The Firm shall designate an individual as the Project Engineer in charge of the Project, subject to the approval of the County. The Firm shall not replace such designated individual without the prior written consent of the County.

#### **SECTION 2: FIRM'S RESPONSIBILITIES**

- A. In accordance with the provisions of Article 9 of the New York State Energy Law The Firm will provide the following engineering/consulting services (to constitute the basic services hereunder) to assist the County with identifying the scope of an Energy Performance Contract ("EPC"), selection of an energy service company ("ESCO"), design of the energy performance project, (the "Work") in accordance with all applicable laws, rules and regulations:
1. The Firm shall perform an energy survey of County-owned and/or maintained facilities and prepare and provide to the County two copies of a written report with findings.
  2. The Firm shall meet with County officials and staff to discuss the County's needs and to review in general the types of projects contemplated to be performed by the County in connection with the Energy Performance Project to be performed as outlined in Section 1, paragraph B of Exhibit "A".
  3. The Firm shall evaluate all of the facilities and real property owned and operated/maintained by the County for the purpose of reviewing:
    - a. Information on site, building services and equipment, including an analysis of the building structure, electrical and mechanical systems of the site and buildings to determine their existing condition and if upgrading or duplication to support any proposed additions and/or alterations is recommended;
    - b. Review of existing planning documents, facility and site plans;
    - c. Investigation of existing conditions and to accurately and adequately assess the need for proposed projects, including an analysis of the County's utility and energy usage over a course of time as determined by the County for each of the facilities.;

- d. Review proposed site use and improvements, selection of materials, building systems and equipment;
  - e. Code Deficiencies/Non-Compliance and Corrective Work;
  - f. Energy Conservation and efficiency; and,
  - g. Building Improvements.
- 4. The Firm shall meet with administrators and as directed by the County the administrators at each of the County facilities for the purpose of discussing their respective concerns relative to the County facility for which they are responsible.
- 5. The Firm shall consult with the County regulations to ascertain its requirements concerning proposed projects and to ascertain whether any new rules/regulations have been implemented concerning same.
- 6. The Firm shall assist the County and its counsel in the preparation of a request for proposal ("RFP") to solicit proposals from ESCOs in accordance with Section 3 of Exhibit "A".
- 7. The Firm shall assist the County in obtaining financing through the ESCO and/or other sources.
- 8. The Firm will require the ESCO to prepare a detailed energy audit and develop the scope of work to be performed, which will produce the most dependable energy savings and energy efficiency for the County, incorporating energy conservation/renewable energy measures important to the County.
- 9. The Firm will assist the County and its legal counsel in the preparation of the EPC with the selected ESCO, if such a contract results from the RFP.
- 10. The Firm will prepare plans, specifications, and applications for approval to insure that all code and operational requirements are addressed and that the project is completed safely and in compliance with the County's unique needs.
- 11. The Firm will provide construction administration services to ensure the project is completed in accordance with approved plans and specifications and the contract with the ESCO in accordance with Section 6 of Exhibit "A".
- 12. The Firm will supervise ESCO's monitoring and verification procedures to ensure that savings will be realized.
- 13. The Firm will prepare certificate(s) of substantial completion.
- 14. The Firm will, for a period of 36 months after substantial completion, assist the County with the evaluation of actual energy savings realized by the Energy Performance Project. This will include, where needed, discussions and meetings with the ESCO and the review of monitoring and verification procedures, reports and related calculations.
- 15. The Firm shall certify that all services performed under this agreement will be performed by engineers or architects licensed by the State of New York.
- 16. The Firm shall further certify in writing to the County that it is free from financial interest in the ESCO which conflicts with the proper completion of the audit and any design work associated with the EPC and that full disclosure has been made to the County detailing all financial compensation received from the ESCO. By signature to this Agreement, the Firm represents and warrants that it does not have any interest, monetary or otherwise, and/or is not affiliated with any ESCO.

17. The Firm shall review the project scope to determine whether it qualifies as an energy conservation measure ("ECM") under the Energy Law and under the EPC proposed by the ESCO.
18. The Firm shall review the detailed breakdown of the energy savings to ensure compliance with all applicable provisions of law.
19. The drawings, plans and specifications prepared by the Firm must be prepared in compliance with all applicable laws, rules, regulations and codes, including, but not limited to the New York Energy Law and other applicable standards.
20. The Firm shall provide the County with a preliminary schedule of the critical design items to accomplish the work of the Project. Said schedule shall reflect timetables commencing from the Design Development Phase through final closeout of the ESCO's work.
21. The Firm shall prioritize the projects to be performed pursuant hereto, taking into account the energy efficiency of the facilities, the needs of the County, as well as the protection and safety of County facilities and the occupants thereof, as expressed to the Firm by the County.
22. The Firm shall attend and prepare minutes for all scheduled project meetings in conjunction with the work to be performed under the EPC.

### **SECTION 3: REQUESTS FOR PROPOSALS**

- A. The Firm shall assist the County in the preparation of a request for proposal ("RFP") to solicit proposals from ESCOs. The Firm shall insure that the RFP attracts competitive and qualified proposers.
- B. The Firm will cooperate with the County's legal counsel in the preparation of the RFP. The Firm shall insure that the RFP attracts competitive and qualified proposers.
- C. The Firm in cooperation and consultation with the County, following the County's approval of the RFP, shall assist the County in obtaining proposals for the work contemplated by the project, including the following services:
  1. Field any questions during the request for proposal (RFP) process.
  2. Attend pre-proposal conference and walk throughs of the facilities with prospective ESCOs.
  3. Prepare any addenda required for clarification purposes.
  4. Conduct pre-award conferences with successful proposers.
- D. The Firm shall review the proposals received including, but not limited to the feasibility of the proposed energy project, the guarantee and the qualifications and experience of proposers and assist the County in determining the proposal that is in the County's best interest. The Firm will advise the County on the acceptability of subcontractors and material suppliers proposed by the ESCOs and will further evaluate and advise the County in writing on the acceptability of the materials and equipment proposed by the ESCO.
- E. Upon selection of an ESCO by the County, the Firm will review the investment grade Comprehensive Energy Audit ("CEA") submitted by the ESCO to determine whether a feasible energy project exists. The Firm shall review all ESCO documentation to justify the proposed energy savings contained in the CEA and present this information to the County.
- F. The Firm shall assist the County and its counsel in negotiating an EPC with the qualified ESCO, if any, selected by the County.

G. The Firm will review the EPC with regard to specific products and procedures that will be employed in constructing the various ECMs that were agreed to in the EPC.

#### **SECTION 4: DESIGN SERVICES**

A. The Firm will prepare plans, specifications, and applications for approval by the County and all government agencies having jurisdiction. These documents will reflect the scope of services and projects negotiated by and between the County and the ESCO and will provide all documentation necessary for approval of government authorities having jurisdiction.

B. If the County and/or government agencies do not approve the plans, or any portion thereof, the Firm shall promptly revise its Design Documents to comply with all applicable requirements, unless the requirements violate county, federal, state and/or local laws governing the project, and/or the standard of professional care used in the industry governing the project.

C. The Firm shall coordinate the information contained on the Drawings.

D. A fixed limit of Construction Cost for the construction work of this Project will be established and financed by the County. The fixed limit of Construction Cost includes: contingencies for design, contingencies for construction, price escalation and for the County's indirect costs, including soft costs and professional fees.

E. The Firm shall review the costs submitted by the ESCO to verify the accuracy of said costs. The Firm shall further review the cash flow analysis for the project to be certain that the work to be performed by the ESCO will guarantee that the County will maintain a positive cash flow during the term of the EPC and guarantee period.

F. The Firm will work with the County and the selected ESCO to prepare a preliminary schedule of the critical items to accomplish the work of the Project. Said schedule shall reflect timetables commencing from the Design Phase through final closeout of the energy performance project.

#### **SECTION 5: CONSTRUCTION DOCUMENTS SERVICES**

A. The Firm shall prepare and submit all documents, applications, and other submittals as the same may be required by the County and any other governmental agency, State or Federal, having jurisdiction over the Project(s).

B. The Firm shall compile and bind a sufficient number of copies, as requested by the County, of the Project Manual for the Project, which shall include technical specifications for the project and such other material necessary to provide a complete manual for construction purposes.

#### **SECTION 6: ENGINEER'S CONSTRUCTION ADMINISTRATION SERVICES**

A. The Firm shall provide administration of the EPC as set forth in this Section.

B. The Firm's responsibility to provide services for the construction phase of this Agreement commences with the appointment of an ESCO and terminates upon the issuance to the County of the final certificates of payment from all contractors or one hundred twenty (120) days from the date of substantial completion for all of the Work, whichever is later.

C. The Firm shall have authority to act on behalf of the County only to the extent provided in this Agreement, unless the County consents to such authority, and/or unless otherwise modified by written instrument.

D. The Firm shall visit the site whenever necessary while work is in progress, and as often as required to resolve critical design issues in the field, to observe the site and work, to familiarize itself with the general progress and quality of the work, and to determine for the County's benefit and protection if the work is proceeding in accordance with the Contract Documents (as set forth in Section 5 hereunder and hereinafter the "Contract Documents"), the agreed upon schedule of work and to prevent overpayment to the ESCO.

E. The Firm shall consult with and report to the County as often as necessary concerning design issues arising during construction and the ESCO's compliance with the Contract Documents and the agreed upon work schedule.

F. On the basis of its on-site observations as an engineer, the Firm shall keep the Owner informed in writing of the progress and quality of the work and it shall guard the County against defects and deficiencies in the work, unexcused delays in the schedule, overpayment to the ESCO and against the ESCO's failure to carry out the work in accordance with the construction documents.

G. The Firm shall be available for project meetings with the ESCO and the County's representatives to discuss, including but not limited to issues relative to design, progress of the work, quality of the work and timely completion of the work.

H. The Firm shall review and approve, reject or take other appropriate action upon the Contractor's submittals (including Shop Drawings, Product Data and Samples, etc.) as necessary to ascertain their conformance with the Contract Documents. The Firm's review shall not be conducted for the purposes of confirming dimensions or quantities except to the extent that the ESCO has requested in writing the assistance of the Firm to determine certain dimensions because those indicated in the Contract Documents conflict with existing field conditions or because the dimensions in the Contract Documents contain erroneous, inconsistent, or incomplete dimensions for which clarification is needed and can best be supplied by the Firm.

I. The Firm shall maintain a record of each submittal received from the ESCO. The record shall include, at a minimum, the subject matter of the submittal, the related specification section number, the provider or supplier of the subject item, material or system, the date received, the action taken, and the date returned to the ESCO.

J. The Firm's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Firm shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

K. The Firm shall prepare drawings, specifications and other documentation and supporting data in connection with Change Orders and Construction Change Directives for the County's approval and execution in accordance with the Contract Documents. The Firm may authorize minor changes in the Work not involving a change in the projected energy savings and/or approvals from any regulatory agencies and/or an adjustment in the Contract Sum and/or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

L. The Firm shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, procedures, scheduling or for safety precautions and programs in connection with the Work. The Firm may, with the assistance of the County's attorney, include in its specifications and designs, requirements governing the construction means, methods, techniques, sequences, or safety precautions in the Contract Documents. Beyond ordinary oversight and oversight required by the performance of their work as described herein, the Firm shall not have responsibility for acts or omissions of the County, ESCO, ESCO subcontractors, or ESCO agents or employees, . However, as set forth in subparagraph M hereof, the Firm shall report in writing to the County known or suspected material

deviations from the Contract Documents as to quality and scope of work, as well as timeliness of the ESCO's performance as ascertained from the most recent construction schedule submitted by the ESCO.

M. The Firm shall advise the County in writing of work which does not conform to the Contract Documents as to quality of the work, scope of the work, or progress of the work. If the Firm observes or is aware of work that does not conform to the Contract Documents, he shall immediately advise the County.

N. Whenever the Firm considers it necessary or advisable for implementation of the intent of the Contract Documents, the Firm will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Additionally, when the Firm receives a recommendation that such additional testing or inspection is required, the Firm shall require such additional inspection or testing.

O. Based on the Firm's observations and evaluations of the ESCO's Applications for Payment, the Firm shall review and certify the amounts due the ESCO. The Firm's certification for payment shall constitute a representation to the County, based on the Firm's evaluations of the work and on the data comprising the Firm's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Firm's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that there are no defects or deficiencies in the work or other impediments to payment known by the Firm. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents and in conformance with County's approvals upon Substantial Completion and measurement and verification for three (3) years thereafter, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Firm. The issuance of a Certificate for Payment shall further constitute a representation, to the best knowledge of the Firm, that the Contractor is entitled to payment in the amount certified.

P. The Firm shall maintain a record of each Contractor's application for payment, copies of which applications shall be sent to the County with certification of each such application by the Firm. Further, the Firm shall not certify said application for payment if it is not accompanied by the following documentation:

1. Certified payroll for employees and employees of subcontractors performing work on the Project;
2. Application for final payment shall include: the items noted in Section 7(A) below and any other information required to effectuate Documentation of Payment as determined by the Firm and County.
3. All additional that may be required by the County.

The Firm shall be responsible only for ascertaining that the documentation listed in subparagraphs 1 and 2 hereof are annexed to the ESCO's application for payment. The Firm shall not be required to review said documentation for completeness or accuracy.

## **SECTION 7: ENGINEER'S POST CONSTRUCTION SERVICES**

A. The Firm shall provide the following services related to completion of the Work:

1. Preparation of punch lists for completion of the Work by ESCO.
2. Review of final close out paperwork submitted by the ESCO, reviewed and collected, and execute such documents which require the Firm's signature.
3. The Firm shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and review, approve or disapprove as appropriate, and forward to the County, and the County's attorneys at

the County's request, for the County's review and records written warranties and related documents required by the Contract Documents and assembled by the ESCO, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4. The Firm shall transmit to the County all manuals, operating instructions, as-built plans, warranties, guarantees and other documents and things required by the EPC and submitted by the ESCO.
  5. The Firm shall review any as-built drawings furnished by the ESCO and shall certify to the County that the same are adequate and complete.
- B. The Firm's responsibility to provide services for post construction phase terminates thirty-six (36) months after the date of substantial completion.

#### **SECTION 8: ADDITIONAL SERVICES**

A. The services described in this Section are not included in the services set forth in Section 2 through 7 of Exhibit "A". The services described hereunder shall only be provided if authorized or confirmed in writing by the County prior to such services being performed or rendered and following the Firm's written recommendation and advice as to the need for these additional services. If services described in this Section are required due to circumstances beyond the Firm's control, the Firm shall notify and receive written authorization from the County prior to commencing such services. If the County indicates in writing that all or part of such Additional Services is not required, the Firm shall have no obligation to provide those services. However, in no event shall the Firm undertake to perform the services described hereunder without the Owner's written authorization.

B. The Firm's compensation for the services listed in this Section if provided by the Firm must be agreed upon by the ESCO for purposes of reimbursement from the ESCO in accordance with Exhibit "B". All approved additional services shall be invoiced by the Firm pursuant to the hourly rate schedule annexed hereto as Exhibit "C".

C. The following services shall be compensated to the Firm as additional services if so approved:

1. Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the completion by the Firm of the construction documents.
2. Providing services required because of significant changes in the Project which are at variance with the Project as designed and approved by the County in accordance with this Agreement, including, but not limited to, size, quality, and complexity unless such revisions are due to the acts, advice, negligence, error or omission of the Firm, its employees or consultants. However, the Firm shall not be entitled to additional fees for services related to the modification of documents as required by applicable government agencies. Furthermore, if the changes in the Project will result in an increase in the cost of construction and hence an increase in the basic service fees of the Firm, the same shall not be compensable as an additional cost.
3. Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work as long as this damage was not the fault of the Firm.
4. Providing services made necessary by the default of the ESCO.
6. Providing surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
7. Providing services relative to future facilities, systems and equipment.
8. Providing art media or computer imaging renderings or building and/or site models.
9. Providing land surveying and topographic services.

10. Preparing a set of reproducible record drawings or drafting analysis showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the ESCO to the Firm in the event the ESCO fails to furnish such drawings to the County as required by the Contract Documents.
11. Participation in observations of the Project of parts thereof near the end of the one year or other warranty period applicable thereto under the EPC. The Firm shall follow-up as appropriate with respect to the inadequate performance of materials, systems, and equipment under warranty. However, this paragraph shall not obligate the Firm to participate in such observation beyond the warranty period set forth in the Contract Documents, and in no event shall the Firm's services be required beyond twelve (12) months from substantial completion of the Project by contractors, except as otherwise provided herein.

## **SECTION 9: STANDARD OF ENGINEER'S SERVICES**

A. The Firm agrees to provide professional services that reflect the standard of professional care that is customary for engineers in the State of New York. The Firm shall not deviate to a lesser standard of care.

B. All drawings, specifications and other documents prepared by the Firm shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations in effect at the time said drawings, specifications and other documents are prepared. The Firm, however, shall not be responsible for additional construction costs incurred due to a change in such laws, statutes, ordinances, codes, orders, rule and/or regulations after the completion by the Firm of the Construction Documents.

C. Any errors or omissions on drawings, specifications or other documents furnished by the Firm shall be promptly corrected by the Firm at no cost to the County. Nothing contained herein shall preclude a claim against the Firm by the County for damages arising from errors or omissions drawings, specifications or any other of the Contract Documents furnished by the Firm. Change orders and/or construction change directives resulting from the Firm's errors or omissions shall not be subject to any additional Firm's fees. The Owner's approval, acceptance, use of or payment for all or any part of the Firm's services or of the project shall not in any way alter the Firm's obligations or the County's rights hereunder.

D. With regard to the services provided pursuant to this contract the Firm (or a subcontractor of Firm) shall (a) identify asbestos containing materials which it encounters, (b) notify the County of potential impacts of those asbestos containing materials on the project, the site, and its occupants; and (c) consult with the County and the County's designated consultant or contractor regarding coordination of the project with asbestos abatement. In addition to asbestos, the Firm shall also be responsible to confirm and notify the County in writing, of the ESCO's findings of hazardous materials/wastes that will be disturbed, or handled/disposed of in performing the Project. Hazardous materials includes, but is not limited to asbestos, lead paint, mercury and PCB's.

E. The Firm shall design the Projects to be undertaken by the County so as to maximize the County's receipt of all available grants, benefits, subsidiaries and funds as and to the extent available.

### **F. REPRESENTATIONS AND WARRANTIES**

By executing this Agreement, the Firm makes the following express representations and warranties to the County:

1. The Firm is professionally qualified to act as the Engineer for the Project and is licensed to practice engineering by all public entities having jurisdiction over the Engineer and the Project.
2. The Firm in providing the services has used the best professional judgment and reasonable care consistent with the standard of practice and care of Engineers for municipalities in the State of New York.

3. The Firm shall maintain all necessary licenses, permits, or other authorizations necessary to act as the Engineer for the Project until the Firm's duties hereunder have been fully satisfied. The Firm agrees to notify the County should the Engineer's license permit or other authorization to act as an Engineer change.
4. The Firm has become familiar with the Project site and local conditions under which the Project is to be designed, constructed and operated.
5. The Firm shall prepare all documents and things required by this Agreement, including, but not limited to, all contract plans and specifications in such manner that they shall be coordinated and adequate for construction and shall be in conformity and comply with all applicable laws, codes and regulations, and the Engineer's signature and seal on construction documents shall certify said compliance.
6. The Firm shall compensate the County for any costs sustained due to the negligent acts, errors or omissions of the Firm in connection with this Project.

#### **SECTION 10: COUNTY'S RESPONSIBILITIES**

A. The County shall furnish the following documentation, if it possesses same, to the Firm to assist it in the performance of its obligations under this Agreement:

1. Surveys describing physical characteristics, legal limitations and utility locations for the site or the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.
2. Long Range Planning Studies prepared on behalf of the County.
3. Utility bills for County facilities

B. With the Firm's assistance and upon the Firm's advice that such services are necessary, the County shall engage appropriate entities for tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents. The Firm shall coordinate such tests as may, in the Firm's professional judgment, be appropriate in the circumstances. To the extent qualified to do so as an engineer, and as necessary, the Firm shall cooperate in the formulation of such tests. The Firm shall take into account the results of such tests in performing the Firm's services.

C. The Firm shall provide to the County all drawings, specifications, and instructions to ESCO and other documents prepared by the Firm and Firm's consultants (including the necessary number of paper and electronic copies) hereinafter referred to as "Project Documents", that are necessary, advisable and sufficient for the County to complete construction of the Project, as provided herein, free from material defects or omissions.

The Firm allows the County to use the Project Documents for future renovations, repairs, additions or alterations to the Project. Any unauthorized use of the Project Documents by County or others shall be at the user's sole risk and without liability to the Firm or the Firm's consultants.

## EXHIBIT "B"

### COMPENSATION SCHEDULE

#### Engineering Performance Engineering Services

- A. Payment(s) to the Firm for all services under this Agreement shall be made by the ESCO. The County will include payment to the Firm in accordance with the terms herein in its contract(s) with the ESCO.
1. Payment for the services under this Agreement shall be solely within the extent of and fully realized from the guaranteed savings anticipated by the EPC, if any. The County shall not be responsible to the Firm for any direct payments for services performed under this Agreement. Payments to the Firm by the ESCO shall be made as set forth in Section A. (4) hereof. The Firm acknowledges that the County has engaged the Firm in connection with an EPC and that payment for the Firm's services is subject to the approval of the EPC by the County and all applicable government agencies and is executory only to the extent of the monies appropriated and available for the purpose of the EPC Contract and no liability on account thereof shall be incurred beyond the amount of such monies. It is understood that neither this Contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of this Contract. The Firm shall have no recourse to or against the County for any payments due to the Firm, it being understood that the Owner has no responsibility for paying any of the Firm's fees, costs or expenses which may be or are described in this Agreement.
  2. In the event that the County enters into an EPC, the Firm's compensation for the services, outlined in Section 1 – 7 of Exhibit "A", shall be payable by the selected ESCO in the amount of: 5% of the Construction Cost for projects over \$10 million; or, 7% of the Construction Cost for projects less than \$10 million, as defined in Section A.(3) of Exhibit "B" as approved by government agencies and financed by the County, except that the initial percentage of payment to the Firm set forth in Section A.(4)(i)(a) and A.(4)(i)(b) of Exhibit "B" shall be based on the proposed project cost prior to approval. In all cases, payment to the Firm shall be made by the ESCO. Total Construction Cost(s) and compensation to the Firm, when combined, shall not exceed the guaranteed energy cost savings as specified in the CEA.
  3. The term "Construction Cost" is defined as follows:
    - i. Construction cost shall include the cost at the current market rates of labor and materials as evidenced by the proposal submitted and approved by all applicable government agencies and financed by the County in connection with the Project construction costs shall not include operation and maintenance costs. In the event that a proposal is not awarded, approved by all applicable government agencies and/or the County does not receive financing for the Project, the County shall not be liable for any costs, fees or other liability incurred by the Firm.
  4. County agrees to insert the following payment schedule into the ESCO RFP and resulting EPC, if any:
    - i. The Firm selected by the County shall be entitled to receive five percent (5%) of the construction cost for projects over \$10 million or, 7% of the Construction Cost for projects less than \$10 million for the energy performance project in accordance with the following schedule:
      - a) 25% upon the County signing contract with ESCO;
      - b) 35% upon submittal of plans and specifications;

- c) 30% upon approval of plans and specifications and
- d) 10% upon substantial completion.

5. All fees identified in this Agreement shall be the sole responsibility of the ESCO selected by the County for this Project. The County will require the ESCO in the execution of an EPC to provide the appropriate funds necessary to permit the ESCO to pay the Firm in accordance with the compensation schedule identified in Exhibit "B" of this Agreement. The County shall not be responsible for any Firm fees, including without limitation, those not covered by the guaranteed savings and the schedule of fees as provided by the Firm.
6. In the event that the County decides not to pursue an EPC for any reason whatsoever, the County shall be under no obligation to pay for any services provided by the Firm.
7. Any additional compensation provided for in this Agreement will also be funded by the selected ESCO and said obligation must be included in the ESCO contract with the County. To that end, County agrees to append a copy of this Agreement to the ESCO contract with County, if any.

#### B. Maximum Hourly Rate Schedule

The "Maximum Hourly Wage Rate Schedule" annexed hereto and made a part hereof as Exhibit "C" shall list the job classifications and maximum hourly wage rate for each classification. The salaries of all employees rendering services under this Agreement must be within the limits of the approved Maximum Hourly Wage Rate Schedule. The Maximum Hourly Wage Rate schedule shall be adjusted annually in accordance with any wage increases granted to County employees in the Civil Service Employees Association. Subject to written approval of the Department, the Firm may grant an employee a salary increase within a classification or a change of a classification upon written notification to the Department one month prior to the effective date of such an increase. Premium pay for overtime work or night differential, if applicable, over and above the straight hourly rate, performed for any services rendered under this agreement shall not be subject to any multiplier. In computing the cost to the County for overtime work performed, the overtime period shall be paid at the agreed multiplier times the straight hourly rate plus the actual premium cost incurred as set forth on the Maximum Hourly Wage Rate schedule. Notwithstanding the foregoing, the maximum billable rate, after the application of a multiplier for any services provided under the terms of this agreement shall not exceed **One Hundred Fifty (\$150.00)** dollars per hour.

## **EXHIBIT “C”**

### **MAXIMUM WAGE RATE SCHEDULE**

Licensed Engineer	\$150.00/hr
Project Engineer	\$125.00/hr
Certified Energy Manager	\$125.00/hr
LEED Certified Professional	\$125.00/hr
Project Administrator	\$95.00/hr

## EXHIBIT "EE"

### Equal Employment Opportunities for Minorities and Women

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Firm shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Firm shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, up-gradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Firm will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, up-gradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Firm shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Firm's obligations herein.

(c) The Firm shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Firm shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

(e) The Firm shall, in its advertisements and solicitations for Sub-consultants, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Sub-consultants must be equal opportunity employers.

(f) Firms must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.

(g) Firms for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Sub-consultants so that, to the greatest extent feasible, all Sub-consultants will be approved prior to commencement of work. Any additions or changes to the list of Sub-consultants under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Firm to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

(h) At any time after Sub-consultant approval has been requested and prior to being granted, the contracting agency may require the Firm to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Firm to submit such documentation at any time after Sub-consultant approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Firm must submit Documentation.

(i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Firm must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.

(j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Firm's Subcontracts and Firm's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.

(k) A Firm shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.

(l) The Firm shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Firm has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The Firm shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Sub-consultant and shall complete all forms provided by the Executive Director or the Department Head relating to Sub-consultant utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Firms or Sub-consultants in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of

affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Firm shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Sub-consultant as to work in connection with the County Contract.

As used in this Appendix EE the term "Best Efforts Checklist" shall mean a list signed by the Firm, listing the procedures it has undertaken to procure Sub-consultants in accordance with this Appendix EE.

As used in this Appendix EE the term "County Contract" shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term "County Contract" does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term "County Firm" means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a Firm, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Sub-consultant.

As used in this Appendix EE the term "County Firm" shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE "Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises" shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Firm reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Firm welcomed bids and quotes from M/WBE Sub-consultants. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Firm's affidavit with a notary's signature and stamp shall be required as part of the documentation.
- b. Proof of having provided reasonable time for M/WBE Sub-consultants to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation.
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE Sub-consultants encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation.
- d. Proof or affidavit that M/WBE Sub-consultants were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Firm that are passed onto the M/WBE.

- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Firm shall be included in the Best Effort Documentation
- g. If an M/WBE is rejected based on cost, the County Firm must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Sub-consultants by the County Firm must also be included with the Best Effort Documentation
- i. County Firms may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term "Executive Director" shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term "Subcontract" shall mean an agreement consisting of part or parts of the contracted work of the County Firm.

As used in this Appendix EE, the term "Sub-consultant" shall mean a person or firm who performs part or parts of the contracted work of a prime Firm providing services, including construction services, to the County pursuant to a county contract. Sub-consultant shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime Firm that are necessary for the prime Firm to fulfill its obligations to provide services to the County pursuant to a county contract. Sub-consultant shall not include a supplier of materials to a Firm who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a Firm, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring Firms to retain or submit documentation of best efforts to utilize certified Sub-consultants and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

Appendix "L"

Certificate of Compliance

In compliance with Local Law 1-2006, as amended, the Proposer/Bidder hereby certifies the following:

1. The chief executive officer of the Proposer/Bidder is:

DAVID NEWMAN, PE (Name)  
222 Middle Country Rd, STE 318, Smithtown, NY 11787 (Address)  
631-360-0006 (Telephone Number)

2. The Proposer/Bidder agrees to comply with the requirements of the Nassau County Living Wage Law, and with all applicable federal, state and local laws.

3. In the past five years, Proposer/Bidder \_\_\_\_\_ has ☒ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed by the Proposer/Bidder, describe below:

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4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action \_\_\_\_\_ has ☒ has not been commenced against or relating to the Proposer/Bidder. If such a proceeding, action, or investigation has been commenced, describe below:

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5. Proposer/Bidder agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

5/5/15  
Dated

David Newman, PE  
Signature of Chief Executive Officer

DAVID NEWMAN, PE  
Name of Chief Executive Officer

Sworn to before me this

5th day of May, 2015.

Joyce D. Puleo  
Notary Public

JOYCE D. PULEO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PU4987291  
Qualified In Suffolk County  
My Commission Expires November 16, 2017

COUNTY OF NASSAU

CONSULTANT'S, CONTRACTOR'S AND VENDOR'S DISCLOSURE FORM

1. Name of the Entity: ECG Engineering, P.C.  
Address: 222 Middle Country Road, Suite 318  
City, State and Zip Code: Smithtown, NY 11787
2. Entity's Vendor Identification Number: 80-0507717
3. Type of Business: ☐ Public Corp ☐ Partnership ☐ Joint Venture  
☐ Ltd. Liability Co ☐ Closely Held Corp ☐ Professional Corporation ☐ Other (specify)

4. List names and addresses of all principals; that is, all individuals serving on the Board of Directors or comparable body, all partners and limited partners, all corporate officers, all parties of Joint Ventures, and all members and officers of limited liability companies (attach additional sheets if necessary):

David M. Newman, P.E.  
222 Middle Country Road, Suite 318  
Smithtown, NY 11787  
Tel: 631-360-0006

5. List names and addresses of all shareholders, members, or partners of the firm. If the shareholder is not an individual, list the individual shareholders/partners/members. If a Publicly held Corporation include a copy of the 10K in lieu of completing this section.

David M. Newman, P.E.  
222 Middle Country Road, Suite 318  
Smithtown, NY 11787  
Tel: 631-360-0006

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6. List all affiliated and related companies and their relationship to the firm entered on line 1. above (if none, enter "None"). Attach a separate disclosure form for each affiliated or subsidiary company.

None

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7. List all lobbyists whose services were utilized at any stage in this matter (i.e., pre-bid, bid, post-bid, etc.). The term "lobbyist" means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements, or to otherwise engage in lobbying as the term is defined herein. The term "lobbyist" does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

(a) Name, title, business address and telephone number of lobbyist(s):

Park Strategies  
101 Park Avenue, Suite 2506  
New York, NY 10178  
Tel#: 212-883-5608

(b) Describe lobbying activity of each lobbyist. See page 4 of 4 for a complete description of lobbying activities.

Park Strategies arranged one introductory meeting with County officials which took place on March 14, 2013.

(c) List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

1. The Clerk of the City of New York
2. NYS Joint Commission on Public Ethics
3. Clerk of the House, U.S. House of Representatives
4. Secretary of the Senate, U.S. Senate
5. City of Orlando, FL

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8. VERIFICATION: This section must be signed by a principal of the consultant, contractor or Vendor authorized as a signatory of the firm for the purpose of executing Contracts.

The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

Dated: 6/1/2015

Signed: David M. Newman P.E.

Print Name: David M. Newman, P.E.

Title: Vice President, Engineering

**The term lobbying shall mean any attempt to influence:** any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including but not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions, department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission, with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.

# PARK STRATEGIES, LLC

June 19, 2015

VIA FEDEX AND ELECTRONIC MAIL

Carnell Foskey  
Nassau County Attorney  
One West Street  
Mineola, NY 11501

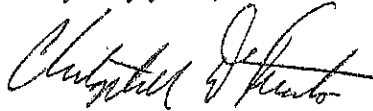
Re: 2015 Nassau County Lobbyist Registration and Disclosure Form

Dear Mr. Foskey:

Pursuant to Nassau County Executive Order No. 2-2015, issued by Nassau County Executive Edward Mangano on May 15, 2015, enclosed herewith please find a completed and signed Lobbyist Registration and Disclosure Form pertaining to representation by Park Strategies, LLC of clients in front of Nassau County and its representatives.

Should you have any questions concerning the above or enclosed, please contact me at (212) 883-5608.

Very truly yours,



Christopher D'Amato  
EVP & General Counsel

Enc.

COUNTY OF NASSAU

LOBBYIST REGISTRATION AND DISCLOSURE FORM

1. Name of lobbyist(s)/lobbying organization: The term "lobbyist" means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission; or to otherwise engage in lobbying activities as the term is defined herein. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements. The term "lobbyist" does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

Park Strategies, LLC, 101 Park Avenue, Suite 2506, New York, NY 10178

Alfonse D'Amato, Armand D'Amato, Christopher D'Amato, Anthony Cancellieri, Robert McBride, William McGahay, Fred Hiffa, Joseph Rossi, John Zagame, Jeffrey Lovell.

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2. List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

New York State (Joint Commission on Public Ethics)

New York City (Clerk of the City of New York, Lobbying Bureau)

United States Senate (Secretary of the Senate)

United States House of Representatives (Clerk of the House)

Nassau County (Nassau County Attorney's Office & Nassau County Department of Information Technology)

City of Orlando, Florida

3. Name, address and telephone number of client(s) by whom, or on whose behalf, the lobbyist is retained, employed or designated:

AETNA LIFE INSURANCE COMPANY, INC., 151 FARMINGTON AVENUE RWBA, HARTFORD, CT 06158 Tel. (516) 451-3125  
AIDS HEALTHCARE FOUNDATION, 6265 W. SUNSET BLVD., 21ST FLOOR, LOS ANGELES, CA 90028 Tel. (323) 880-5301  
ALLVISION, LLC, 420 LEXINGTON AVENUE, SUITE 1801, NEW YORK, NY 10170 Tel. (212) 661-7600  
BEST LED GROUP, 1300 VETERANS HIGHWAY, SUITE 150, HAUPPAUGE, NY 11788 Tel. (631) 630-6412  
GANNETT FLEMING, INC., P.O. BOX 47100, HARRISBURG, PA 17108-7100 Tel. (717) 763-7211  
GLOBAL COMMUNICATION SYSTEMS, INC., 2700 W. CYPRESS CREEK ROAD, SUITE D100, FORT LAUDERDALE, FL 33309 Tel. (954) 733-6700  
HUNTER EMS INC., 40 SHERIDAN BOULEVARD, INWOOD, NY 11096 Tel. (631) 777-5600  
KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC., 100 WILLIAMS DRIVE, RAMSEY, NJ 07446 Tel. 201-236-4364  
MICROSOFT CORPORATION 901 K STREET NW, WASHINGTON, DC 20001 Tel. (202) 263-5800  
NASSAU EVENTS CENTER, LLC, 65 FOREST CITY RATNER COMPANIES, 1 METRO TECH CENTER, BROOKLYN, NY 11201 Tel. (718) 923-8400  
NASSAU HEALTH CARE CORPORATION, 2201 HEMPSTEAD TURNPIKE, EAST MEADOW, NY 11554 Tel. (516) 572-0123

NASSAU REGIONAL OFF-TRACK BETTING CORPORATION, 139 LIBERTY AVENUE, MINEOLA, NY 11501 Tel. (516) 572-2800  
 NEXTERA ENERGY RESOURCES, LLC, 700 UNIVERSE BOULEVARD, FORT LAUDERDALE, FL 33308 Tel. (561) 694-3479  
 OXYGEN FINANCE AMERICAS, INC., 3701 SACRAMENTO STREET, SUITE 438, SAN FRANCISCO, CA 94118 Tel. (972) 808-7260  
 R.T.R. FINANCIAL SERVICES INCORPORATED, 843 FATHER CAPODANNO BLVD., STATEN ISLAND, NY 10305 Tel. (814) 844-1701  
 REDFLEX TRAFFIC SYSTEMS, INC., 23751 NORTH 23RD AVENUE, SUITE 150, PHOENIX, AZ 85086 Tel. (623) 207-2000  
 SQUAD SECURITY, INC., 20 BROAD STREET, 14TH FLOOR, NEW YORK, NY 10005 Tel. (212) 486-6520  
 TRANSDAY SERVICES, INC., (P)KA VEOLIA TRANSPORTATION SERVICES, INC.), 720 E. BUTTERFIELD ROAD, SUITE 300, LOMBARD, IL 60148 Tel. (830) 382-2388  
 TRIAD GROUP, LLC, 405 JORDAN ROAD, TROY, NY 12180 Tel. (800) 337-7419  
 UNIVERSAL MANAGEMENT TECHNOLOGY SOLUTIONS, INC., 30 WALL STREET, NEW YORK, NY 10005 Tel. (523) 780-1468

4. Describe lobbying activity conducted, or to be conducted, in Nassau County, and identify client(s) for each activity listed. See page 4 for a complete description of lobbying activities.

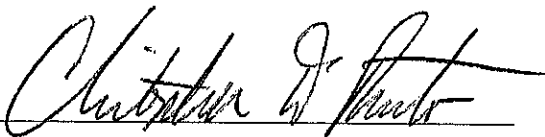
AETNA LIFE INSURANCE COMPANY, INC.: Office of County Executive – contacted County representatives to discuss health insurance programs for Nassau County employees/retirees.  
 ALLVISION, LLC: Office of County Executive – contacted County representatives concerning program to display electronic advertising and information sign network.  
 GANNETT FLEMING, INC.: Office of County Executive, County Planning Department, and Public Works Department – facilitate meetings with County representative to discuss sewer, water and transportation infrastructure needs and services.  
 GLOBAL COMMUNICATION SYSTEMS, INC.: Office of County Executive, Nassau County Health Care Corporation – facilitate meetings with County representative to discuss WIRELESS TELECOMMUNICATIONS, DISTRIBUTED ANTENNA SYSTEMS.  
 HUNTER EMS INC.: Office of the County Executive, Office of the Nassau County Department of Health – facilitate meetings with County representatives to discuss provision of MEDICAL TRANSPORTATION SERVICES.  
 KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.: Office of County Executive, Nassau County Industrial Development Agency – contacted County representatives to discuss economic development initiatives, workforce expansion.  
 MICROSOFT CORPORATION: Office of County Executive – contacted County representatives to discuss Information Technology software and related services, County master license agreements for the purchase of Microsoft products off of NYS OGS contracts.  
 NASSAU EVENTS CENTER, LLC: Office of County Executive, Nassau County Legislature – contacted County representatives and legislative members for purposes of discussing the Nassau Veterans Memorial Coliseum redevelopment project.  
 NASSAU HEALTH CARE CORPORATION: Office of County Executive – facilitate meetings with County representatives for purposes of discussing PROVISION OF HEALTH CARE SERVICES, FUNDING FOR HEALTH CARE SERVICES, REAL ESTATE DEVELOPMENT.  
 NASSAU REGIONAL OFF-TRACK BETTING CORPORATION: Office of County Executive, Nassau County Legislature – facilitate meetings with County representatives and legislators for purposes of discussing racing, wagering, and operation of VLTs at OTB parlors.  
 NEXTERA ENERGY RESOURCES, LLC: Office of County Executive, Nassau County Legislature – contacted County representatives and help facilitate meetings with County representatives and legislative members for purposes of discussing RE-POWERING OF E.P. BARRETT GENERATING STATION 13-F-0464 in Island Park, NY.  
 OXYGEN FINANCE AMERICAS, INC.: Office of County Executive, Office of Comptroller, Office of Shared Services – contacted County representatives to facilitate meeting to discuss payment processing platform and technology; Early Payment Management Program RFP # PR0621-14-14.  
 R.T.R. FINANCIAL SERVICES INCORPORATED: Office of County Executive, Nassau County Traffic and Parking Violations Agency – contacted County representatives to facilitate discussion regarding receivables collections technology and services; proposal for collections services contract in connection with traffic and parking violations in County.  
 REDFLEX TRAFFIC SYSTEMS, INC.: Office of County Executive – contacted County representatives to facilitate discussion regarding County's traffic photo-enforcement program.  
 SQUAD SECURITY, INC.: Office of County Executive – contacted County representatives to facilitate discussion and meeting regarding security and inspection services.  
 TRANSDAY SERVICES, INC.: Office of County Executive, Nassau County Legislature – contacted County representatives to facilitate discussion regarding potential privatization of operation of public bus service provided by MTA/Long Island Bus; contacted legislators in support of the Nassau Inter-City Express bus operating contract.  
 TRIAD GROUP, LLC: Office of County Executive, Office of Comptroller – contacted County representatives regarding review of Triad's contract to provide third party administrator services for the County's 207-c and workers' compensation programs.  
 UNIVERSAL MANAGEMENT TECHNOLOGY SOLUTIONS, INC.: Office of County Executive, Department of Information Technology – contacted County representatives to facilitate discussions regarding procurement of Information technology products and services.  
 ECO ENGINEERING, P.C., 222 MIDDLE COUNTRY ROAD, SUITE 310, SMITH TOWN, NY, 11707: Office of County Executive – facilitated introductory meeting with County representatives for purposes of discussing energy performance contracting services and capabilities.  
 ATLANTIC YARDS DEVELOPMENT CORP.: Office of the County Executive, Nassau County Legislature – contacted County representatives and legislators in support of legislative approval of Nassau Veterans Memorial Coliseum redevelopment recommendations.

5. The name of persons, organizations or governmental entities before whom the lobbyist expects to lobby:

Office of the Nassau County Executive  
 Office of the Nassau County Comptroller  
 Nassau County Legislature  
 Nassau County Department of Public Works  
 Nassau County Health Department  
 Nassau University Medical Center/Nassau Health Care Corporation  
 Nassau County Office of Shared Services  
 Nassau County Traffic and Parking Violations Agency

VERIFICATION: The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

Dated: 06/19/2015

Signed: 

Print Name: Christopher D'Amato

Title: EVP & General Counsel

**The term lobbying shall mean any attempt to influence:** any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including but not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions, department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission, with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.